Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
ON JOINT BOARD RECOMMENDED DECISION

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I. Introduction

The National Association of State Utility Consumer Advocates ("NASUCA")[1] hereby replies to other parties' comments on the Notice of Proposed Rulemaking ("NPRM") of the Federal Communications Commission ("Commission"), released June 9, 2003 in this docket.[2] The NPRM sought comment on the Recommended Decision of the Federal-State Joint Board on Universal Service ("Joint Board"), released April 2, 2003, regarding changes to the federal Lifeline and Link-Up programs.[3]

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[1] NASUCA is an association of 42 consumer advocates in 40 states and the District of Columbia. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio Rev. Code Chapter 4911.

[2] The NPRM (FCC 03-120) was published in the Federal Register at 68 Fed. Reg. 42333 (July 17, 2003).

[3] *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 03-J2 (April 2, 2003) ("Recommended Decision"). Link-Up assists low-income customers in being connected to the public switched telephone network, while Lifeline is ongoing assistance to maintain that connection. The two programs will generally be referred to collectively here as "Lifeline."

In initial comments, NASUCA agreed with much of the Recommended Decision, including the recommendation to adopt an income-based eligibility criterion. NASUCA differed from the Recommended Decision, however, in supporting a 150% of federal poverty guideline ("FPG") criterion, rather than the 135% criterion recommended by the Joint Board. NASUCA also recommended that this income-based criterion -- like many other of the proposed changes to Lifeline -- be a minimum federal standard for all states receiving federal Lifeline funds.

NASUCA also supported making automatic enrollment a federal standard, along with on-line verification. For other customers, verification and reverification of eligibility should be kept as simple as possible. A customer's self-certification of eligibility -- particularly on the income criterion -- should suffice. Carriers should be able to request documentation during periodic audits.

Other federal standards should include a prohibition on restrictions on Lifeline customers' subscription to vertical services and requirements for disconnection and reconnection of Lifeline customers' service. By contrast, *guidelines* for outreach to customers eligible for Lifeline should be sufficient.

Many of NASUCA's -- and the Joint Board's -- recommendations are supported by other commenters.[4] Those commenters whose views contradict these

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[4] Comments were filed by ACORN; AT&T Corp. ("AT&T"); BellSouth Corporation ("BellSouth"); Dobson Communications Corporation ("Dobson"); Empowerment Center of Greater Cleveland and Consumers for Fair Utility Rates ("Cleveland Consumers"); Florida Public Service Commission ("FlaPSC"); National Consumer Law Center on behalf of Massachusetts Union of Public Housing Tenants ("NCLC"); National Fuel Funds Network ("NFFN"); Oklahoma Corporation Commission ("OkCC"); People of the State of California and the California Public Utilities Commission ("California"); Pennsylvania Public Utility Law Project ("PULP"); Public Utilities Commission of Ohio ("PUCO"); Public Service Commission of the State of New York ("NYPSC"); Texas Legal Services Center ("TxLSC"); Texas Office of Public Utility Counsel ("TxOPC"); Tracy Rascon; United States Conference of Catholic

recommendations are discussed below.[5]

NASUCA has in many different comments expressed concerns about the size of the Universal Service Fund.[6] NASUCA is also concerned about the size of the low-income portion of the Fund, but recognizes that Lifeline benefits flow directly to needy customers, rather than to service providers. NASUCA understands that the proposals for an income-based criterion will add subscribers and benefit other current subscribers, thus increasing the size of the fund. Yet as USCCB notes, the $100 million increase projected for the 135% of FPG criterion represents only a 2% increase in the total fund.[7] As discussed below, the 150% of FPG criterion would increase the total fund by at most 5%.

II. The purpose of Lifeline is to "preserve and advance" telephone subscription among low-income customers.

Section 254(b) of the 1996 Telecom Act, 47 U.S.C. 254(b), states that the purpose of the various support provisions is the "preservation and advancement" of universal service. This purpose applies to the goal of 47 U.S.C. 254(b)(3) that "[c]onsumers in all regions of the Nation, including low income consumers … should have access to telecommunications and information services … that are reasonably comparable to those

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Bishops, et al. ("USCCB"); United Utilities, Inc. ("UUI"); Verizon; and WorldCom, Inc., d/b/a MCI ("MCI").

[5] MCI tosses in a plug for its connection-based USF contribution mechanism. MCI at 2. For the reasons expressed in NASUCA's comments on that issue in the 96-45 docket, MCI's proposal should be tossed back out.

[6] See, e.g., *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, et al., NASUCA Comments (May 16, 2003) at 3-4.

[7] USCCB at 6.

services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."

The measure of Lifeline's effectiveness is whether it enables more low-income consumers in a state to subscribe -- and continue to subscribe -- to telephone service than would be the case without Lifeline. Thus both adding new subscribers and keeping current subscribers on the network are missions of the federal low-income fund.[8] The proposals in NASUCA's comments were intended to address both missions.

Verizon would focus entirely on changes to Lifeline that would add new subscribers to the network.[9] This writes "preserving" subscribership out of the statute. Thus Verizon's complaints (at 8-10) that the 135% of FPG income-based criterion "is not targeted to increase subscribership" basically miss the point of the law.

The high cost support portions of the USF are not exclusively focused on adding new subscribers to the telephone network; they are also concerned with maintaining subscribership. The Lifeline program has the same dual purpose.

Verizon disputes at length the impact of Lifeline on telephone subscribership, citing various studies.[10] The key statistics are, however, contained in the Monitoring Report.[11] Table 6.3 in the Monitoring Report shows that, prior to the adoption of the national Lifeline program directed by the Act, states with Lifeline programs gained low-income subscribers at a rate more than twice that of states without Lifeline. And Table

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[8] See USSCB at 3-4.

[9] Verizon at 1.

[10] Verizon at 10-13. Verizon's studies also purport to identify only 20% of the increase in subscribership as attributable to Lifeline. Verizon at 11. Given the variety of causes for subscribership, 20% appears to be reasonable.

6.4 shows that, comparing levels of support provided to Lifeline customers, higher levels of support led to higher subscribership.[12]

The 135% of FPG eligibility criterion is predicted to add \$105 to \$139 million to the USF.[13] As USCCB, et al. correctly note (at 6), this is only a 2% increase in the total fund. Indeed, compared to the same base, the 150% of FPG criterion would add at most \$315 million or 5% to the fund. If the fund is otherwise assumed to grow to \$7.37 billion by 2007 (see Verizon at 8), an additional \$315 million will be 4% of that fund. Given the dual purposes of preserving and advancing universal service, and the direct benefits to Lifeline customers, this amount is reasonable.

III. The Commission should establish floors for the federal program.

Various of the commenters argue for continuation of the current federal *laissez faire* policy toward state Lifeline programs.[14] None of these comments adequately addresses the principle that Lifeline and Link-Up are federal programs, funded largely with federal dollars even in those states which themselves provide some additional funding.[15] Given the source of funding, it is entirely appropriate for the Commission to set minimum federal eligibility standards which would apply to all states. This would help to ameliorate the current situation wherein consumers in neighboring states are

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[11] Universal Service Monitoring Report, CC Docket No. 98-202, October 2002 ("Monitoring Report").

[12] It should also be noted that the Commission has considerably more information showing the ameliorative impact of Lifeline than it has for the high-cost portion of the fund.

[13] Recommended Decision, Appendix F ("Staff analysis") at 2.

[14] See, e.g., FlaPSC at 2-3.

[15] 47 U.S.C. § 254(d); *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 448 (5th Cir. 1999).

subject to significantly different eligibility standards for a program that is funded with federal dollars.

Of course, states should still retain the flexibility to broaden the federal eligibility minimums if they wish. Moreover, states that contribute additional funds to Lifeline programs should retain the discretion to set their own eligibility requirements for those programs, but should also offer the federal program, with benefit levels and eligibility standards set by the FCC, as an option.[16]

Those who oppose minimum federal standards for Lifeline cite the need for state flexibility.[17] Yet this "flexibility" is not, in fact, flexibility to respond to consumers' needs, but is flexibility to deny federal benefits to consumers who have been determined at the federal level to be needy. Real flexibility to meet customers' needs would be accomplished by allowing states to add consumers to those made eligible under a federal standard, not to restrict the federal standard.[18]

Verizon states that "the Joint Board proposals to expand the eligibility criteria for Lifeline … are best explored at a local- or state-specific basis, as needed to target pockets of low penetration, rather than adopted as federal guidelines that would be applied to all states."[19] The problems of telephone penetration among low-income customers are national in scope; it is necessary for the federal program to adopt federal minimum standards for the Lifeline program.

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[16] TxOPC at 2-3.

[17] See, e.g., Verizon at 5.

[18] See Recommended Decision, ¶ 26.

[19] Verizon at 1.

IV. There is a significant need for information about Lifeline.

Unlike Verizon (see Verizon at 10-13), BellSouth appears to understand the complexity of the issues involved here in preserving and advancing service among low-income consumers.[20] Verizon's skepticism about Lifeline should, in fact, drive an increased level of information gathering.[21] Among other things, the states should be required to submit the information discussed in ¶10 of the Recommended Decision.[22] Parties as diverse as NCLC and BellSouth support this information collection.[23] A project to obtain information concerning the results of changes to federally-funded programs in the states should not be optional for the states.

Attachment 1 to NASUCA's comments was a compilation showing the ranking of the states based on the effective enrollment of Lifeline/Link-Up households as shown in the Staff Study. The Attachment showed a dramatic diversity among the states in estimated Lifeline-eligible household penetration in 2002.

The Commission must investigate the reasons for these differences. NCLC correctly notes some of the more common characteristics for successful Lifeline programs.[24] This investigation should include why some states have low penetration rates, as well as why some states appear to have more Lifeline subscribers than the number of income-eligible customers estimated by Staff.

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[20] BellSouth at 2-3.

[21] The same sort of information gathering should occur for the high cost fund.

[22] See Recommended Decision, Appendix C.

[23] NCLC at 10-11; BellSouth at 10.

[24] NCLC at 9-10; see also *id*. at 12.

Based on the statistics in the Staff analysis, Verizon leaps to the conclusion that "no less than 780,000 of the 3.2 million households that took Lifeline support in California during 2002 were not eligible to receive it."[25] It should be recalled that the tables in the Staff analysis were in turn based on estimates of the number of eligible households in each state.[26] Thus rather than assuming that almost a quarter of the California customers on Lifeline are defrauding the system, as Verizon apparently does, it is just as reasonable to assume that the Staff analysis underestimated the number of eligible households in the State. A similar compilation by NCLC based on information of approximately the same vintage showed California with 91.2% of eligible households enrolled in Lifeline.[27] Regardless, this highlights the need for information about the Lifeline programs.

It should also be clear that it is not only the Lifeline portion of the USF about which the Commission lacks detailed information on practices and performance. Both the high-cost and the schools and libraries fund could benefit from substantial clarifying information of this sort.

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[25] Verizon at 10, citing Table 1.B. of the Staff analysis.

[26] See Staff analysis Tables 1.A. and 1.B.

[27] NCLC Comments (December 28, 2001), Attachment A.

V. A 150% of the federal poverty guideline income eligibility criterion should be part of the federal minimum standard.

A. Income eligibility generally

The Joint Board correctly found that adding an income-based criterion will increase low-income participation in the Lifeline/Link-Up program.[28] As stated in the PUCO's comments (at 4-7), the Wirthlin research conducted for SBC Ohio and Verizon showed that an income-based eligibility criterion would decrease the number of non-telephone households in those companies' service territories. The Joint Board estimates that adding a 135% of FPG income criterion could result in approximately one million additional subscribers receiving Lifeline benefits. *Id*. As reported in NASUCA's initial comments, NASUCA estimates that using 150% of the FPG as the threshold will increase telephone subscribership by more than six hundred thousand households, and would extend Lifeline benefits to 2.5 to 2.9 million additional customers.[29]

An income-based eligibility criterion meets both purposes of low-income support: It will help consumers who currently cannot afford telephone service to get on the network and it will help the consumers that have to choose between paying for telephone service or groceries to stay on the network.

A diverse group of parties generally support the adoption of an income-based eligibility criterion.[30] These supporters include carriers, regulators and consumer advocates.

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[28] Recommended Decision , ¶ 15.

[29] NASUCA Comments at 12.

[30] See, e.g., Dobson at 3; NCLC at 5-6; NFFN at 7; NYDPS at 2; UUI; FlaPSC at 3; BellSouth at 3-4.

The opposition to an income-based criterion is much narrower. Verizon opposes it, stating, "Such a rule, with no clear-cut way to verify eligibility, likely would invite waste, fraud and abuse of universal service funds."[31] The issue of income verification is discussed below, but for now it suffices to note that income-based eligibility is currently used in at least twenty-one states, without any significant evidence of waste, fraud or abuse.[32] In addition, there is far more uncertainty about waste in the two largest segments of the USF, high-cost funding and the schools and libraries program.

California uses income as an eligibility criterion for its Lifeline program.[33] Yet California opposes extending income-based eligibility to states that do not create and contribute to their own intrastate Lifeline programs.[34] In the first place, California's view does not reflect current facts: Currently, Minnesota, Missouri and New Jersey all use income-based eligibility,[35] but do not have their own intrastate programs. There is nothing in the current Commission rules that forbids a state from adopting income-based eligibility without a state contribution.

California states that it "is particularly concerned that a state that lacks a state-funded universal service program would have little, if any, incentive to create such a

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[31] Verizon at 1.

[32] Based on a review of information at http://www.lifelinesupport.org/li/lls/, income-based eligibility is used for at least one company in the following jurisdictions: Arizona, California, District of Columbia, Florida, Idaho, Kansas, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, and West Virginia. See also TxOPC at 4.

[33] California at 6-7.

[34] *Id*. at 6.

[35] See footnote 32.

program if federal funding is now available."[36] Yet of the twenty states that currently use income-based eligibility, seventeen have state universal service programs, taking advantage of the maximum amount of federal funding, just like California.[37] Further, there remain only twelve that states do not have state matching programs.[38]

Equally importantly, California's opposition is based on a concern that "California ratepayers would be forced to assume a greater share of the financial burden in funding an expanded federal program that subsidizes those states that decline to adopt their own programs."[39] The Staff analysis reports that in 2000, California had 3.2 million Lifeline subscribers out of a national total of 5.6 million, or almost 60% of the total; further, the USAC Annual Report shows that in 2002, California received $313.6 million in low-income support out of the national total of $673.1 million, or almost half of the total.[40] California has only about 12.5% of the national population, and has less than 15% of the national population below 125% of FPG.[41] More importantly for this purpose, California is by far the largest net recipient of low-income support dollars[42]; indeed, low income receipts are a significant factor in California being the largest net recipient of

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[36] California at 6.

[37] See Monitoring Report, Table 2.1.

[38] *Id*. The Monitoring Report lists Ohio as a state without a matching program. The four largest ILECs on Ohio -- SBC Ohio, Verizon, CBT, and Sprint, representing over 90% of the state's access lines -- all have Lifeline programs where matching funds are provided by the telephone company.

[39] California at 6.

[40] Universal Service Administration Company, 2002 Annual Report at 48.

[41] See http://ferret.bls.census.gov/macro/032001/pov/new25_001.htm (cited in FlaPSC at 2).

[42] Monitoring Report, Table 2.13.

universal service funding.[43] Clearly, California seeks to maintain its current advantage by denying benefits to low-income consumers throughout the country.

Verizon objects to increasing the burden on states like Alabama that are net payors to the Lifeline part of the USF.[44] Yet Alabama is one of the states with very narrow criteria for eligibility[45]; the adoption of minimum federal standards will assist many additional customers in that state and others.

The Act directs that there be federal support for low-income consumers, not just low income customers who participate in other government programs.[46] Clearly, the need for financial assistance with telecommunications service is not necessarily tied to the need for or participation in other low-income support programs. Contrary to Verizon's and California's views, the Commission should extend eligibility for Lifeline nationwide to consumers who meet specific income criteria, not just consumers who participate in other low-income assistance programs.

None of the commenters rebut the inevitable problems in a Lifeline program without income-based eligibility: As long as eligibility for Lifeline is exclusively program-based, rather than income-based, decreasing participation in those programs will shrink the lifeline pool.[47] In addition, the reliance on program-based eligibility means that two families with precisely the same income are treated differently under the lifeline program: One family receives the benefit of Lifeline because it receives a separate low-

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[43] Monitoring Report, Table 1.12.

[44] Verizon at 4.

[45] See footnote 32.

[46] See 47 U.S.C. § 254(b)(3).

income benefit, while the other family is without a telephone because it does not qualify for or chooses not to accept the separate low-income program's benefits. This does not further the universal service purposes of the Act, and there can be no real debate about the need for assistance of these low-income consumers.

B. The Commission should adopt household income at or below 150% of the federal poverty guideline as an eligibility criterion for Lifeline and Link-Up.

A number of commenters join NASUCA in supporting the use of a 150% of FPG income-based eligibility criterion rather than the 135% recommended by the Joint Board.[48] As the PUCO states, "this threshold [is] effective in capturing more households that qualify as elderly or fall into the working poor category."[49]

NCLC notes (at 6) that there are in fact fewer households in the 125-150% of FPG income bracket than in the 100-125% bracket. This means that it is reasonable to assume that the incremental burden on the fund of moving from a 135% criterion to a 150% criterion should actually be less than estimated by NASUCA. And USCCB (at 4) notes that "more than 30 states either have a 150% of the FPG eligibility standard or allow Lifeline participation based on membership in a program with an income-based requirement of at least 150% of the FPG."[50]

The Joint Board defended the use of 135% of the FPG because it "strikes an appropriate balance between increasing subscribership and not significantly burdening

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[47] See PUCO at 4.

[48] See, e.g., ACORN at 2; Cleveland Consumers at 2; PUCO at 9; TxOPC at 5; USCCB at 3-5.

[49] PUCO at 9.

[50] See also USCCB at 5, n. 21.

the universal service support mechanism."[51] Yet LIHEAP is the largest federal program that assists consumers with their utility bills.[52] Customers with household income at or below 150% of the FPG can receive this utility bill assistance. Without using a 150% of FPG eligibility criterion, two households, one enrolled in LIHEAP and one that is not, will be treated differently for Lifeline purposes even though their incomes are the same.

C. The income-based criterion should apply to all state Lifeline programs that accept federal funding.

As noted above, California -- for its own reasons -- opposes the adoption of a national income eligibility standard. Opposition also comes from two other states, Florida and Oklahoma. All three states seek to continue the states' ability to limit how the money from this federal program is spent.

Florida states that "additional data and analysis are needed before any specific standard can be endorsed beyond that which is set forth in our state statute."[53] The Florida statute can govern how Florida's contribution is spent, but should not be able to limit the availability of federal dollars to consumers who, based on a federal standard, are indeed needy.

Oklahoma, for its part, says that "$24,840 is not necessarily considered 'poverty level' in Oklahoma."[54] The $24,840 figure represents 135% of the FPG for a family of four.[55] Oklahoma may be correct, for Oklahoma, but its statement is, by definition,

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[51] Recommended Decision, ¶ 17.

[52] 42 U.S.C. § 8624(b)(2)(B); see NCLC at 3.

[53] FlaPSC at 3.

[54] OkCC at 2.

[55] 68 Fed. Reg. 6456-6458 (February 7, 2003); see NASUCA comments at 10.

universally correct, simply because 135% of the FPG is greater than the poverty level. The Act, however, refers to support for "low-income" customers, not customers "in poverty." And the comments of numerous parties demonstrate that 150% of the FPG is "low income."[56]

TxOPC notes that "flexibility should be a tool to allow states to excel beyond minimum standards. It should not be a tool for some states to deny Lifeline … due to the state program's limited eligibility requirements."[57] NASUCA agrees.

VI. Additional programs should be added to determine eligibility.

Along with NASUCA, Florida (at 4), New York (at 2), UCSSB (at 8-9), NCLC (at 3-5), and Cleveland Consumers (at 2) all agree with the Recommended Decision's conclusion that Temporary Assistance for Needy Families ("TANF") and National School Lunch ("NSL") should be added as default criteria for the Lifeline/Link-Up program.[58] In fact, UCSSB goes further and recommends that participation in Head Start also qualify households for Lifeline/Link-Up.[59]

Verizon states that before the Commission adds TANF and NSL as default criteria, more study is needed regarding the cost and the effect on subscribership of

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[56] See, e.g., NCLC at 5.

[57] TxOPC at 2; see also UCSSB at 6-7.

[58] Recommended Decision, ¶ 20.

[59] UCSSB at 8.

adding these programs.[60] These programs should be added to the federal default criteria for participation in Lifeline even without cost and subscribership information.

Both NCLC (at 4) and Cleveland Consumers (at 2) agree that, for whatever reason, there are eligible households that qualify for other low-income programs but may not participate in those programs. Adding TANF and NSL as qualifying criteria will increase the likelihood that more households that are eligible for Lifeline will subscribe.

The Recommended Decision (at ¶ 1) describes Lifeline as "federal support programs that are used to advance universal service and to ensure that quality telecommunications services are available to low-income consumers at just, reasonable, and affordable rates." Not including TANF and NSL, two low-income programs in which millions of consumers participate, would needlessly exclude some households from receiving lifeline benefits even though they are low-income.

Oklahoma believes that adding TANF would prove difficult to monitor because TANF is a temporary program.[61] Oklahoma's concern is not a reason to exclude TANF as an eligibility criterion. Households tend to move on and off all low-income programs, whether the program is officially temporary or not. Monitoring participation in TANF should be no more difficult than monitoring and verifying participation in the other eligible low-income programs. Consumers have the obligation to inform the company if they are no longer participating in a low-income program and therefore are no longer eligible to receive lifeline benefits.[62] In its initial comments (at 20-22), NASUCA

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[60] Verizon at 14. It should be noted that Verizon Maine, Verizon New Jersey and Verizon Pennsylvania already use TANF as a qualifying program for Lifeline.

[61] OkCC at 3.

[62] 47 C.F.R. § 54.409(b).

recommended that carriers would have the right to periodically audit participation in low-income programs to verify continued eligibility for lifeline benefits.

Verizon believes that including the National School Lunch program as a qualifying criterion presents its own unique problems because the recipients of this program are children, and children cannot certify, under penalty of perjury, that they participate in the program.[63] However, what Verizon overlooks is that it is the *household* where the child resides that qualifies for NSL, not just the child.[64] In fact, the application for NSL provides the opportunity for the adult household member to provide a food stamp or TANF case number in order to qualify the child for NSL. To the extent a child living in a low-income household qualifies for NSL, that household should also qualify for lifeline benefits.

UCCSB's recommendation to add Head Start as a default criterion deserves consideration. Families receiving TANF or SSI benefits are eligible for Head Start. Adding Head Start as an additional criterion would further increase the likelihood that eligible households will participate in Lifeline/Link-Up.

VII. Automatic enrollment should be a federal standard for state Lifeline programs.

The Joint Board has recommended that the Commission encourage all states to adopt automatic enrollment.[65] The majority of commenters recognize that automatic

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[63] Verizon at 14.

[64] See http://www.fns.usda.gov/cnd/Guidance/Eligibility%20Guidance%20Final%20version.pdf. There appears to be one exception to this. Foster children qualify for NSL based on that child's monthly "personal use" income.

[65] Recommended Decision, ¶ 38.

enrollment has been successful where implemented and support the Joint Board's recommendation.[66] Automatic enrollment is credited with increasing Lifeline enrollment,[67] overcoming a lack of knowledge on the part of Lifeline eligible customers,[68] and streamlining the verification process.[69] All of these benefits support adoption of the NASUCA proposal that automatic enrollment be a requirement for those states which offer the federal Lifeline program, subject to waiver upon request of individual state commissions.[70] Automatic enrollment should be viewed as an integral part of Lifeline program modifications, for the reasons set forth in NASUCA's and others' comments.

There is no dispute that automatic enrollment has contributed to increases in Lifeline subscribership in those states that have implemented automatic enrollment. New York, Texas and Nevada are cited for their successes.[71] The fact that these states have not all used the exact same approach illustrates that there is room to accommodate individual state concerns, while fulfilling the goals of § 254 of the Act. For example, the New York public welfare agency interfaces with the telecommunications carriers directly, whereas a third party administrator will be used for both telephone and electric low income assistance in Texas.[72] Enrollment of Lifeline eligible customers may be approached

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[66] See, e.g., NYDPS at 2; FlaPSC at 6; PULP at 2; OkCC at 4; TxOPC at 6; USCCB at ii, 9; NFFN at 8-9. NCLC recommends that the "Commission should do whatever it can to promote the use of electronic means of enrollment and verification." NCLC at 8.

[67] NYDPS at 2; TxOPC at 5, fn. 9, and at 6; TxLSC at 1; FlaPSC at 6.

[68] PULP at 2.

[69] FlaPSC at 6; NFFN at 8-9.

[70] NASUCA at 14.

[71] NYDPS at 2; USCCB at 9.

[72] NASUCA at 15-16; TxOPC at 5, fn. 9.

separately, or as part of a statewide effort to assist low-income utility consumers.[73] State public policy regarding low-income assistance and privacy can be accommodated even under a federal Lifeline program automatic enrollment requirement.

BellSouth points to the complexity and cost of implementing automatic enrollment as grounds to defer any action.[74] In contrast, the Florida and Oklahoma commissions recognize that the task may not be easy, but recognize the benefits which automatic enrollment will provide.[75] Indeed, as the Florida commission points out, NARUC has supported automatic enrollment as a tool to improve Lifeline enrollment.[76] Under NASUCA's proposal, the benefits of automatic enrollment would not be deferred, but states could for good cause request a waiver of the automatic enrollment requirement.

The experiences of commissions and carriers that have already successfully participated in automatic enrollment should be used as a model for implementation of automatic enrollment.[77] The goal is to assure that as many low income customers eligible to participate in the federal Lifeline program as possible are enrolled, regardless of which carrier provides their service or the state in which they reside.

Automatic enrollment most effectively reaches those consumers who have already identified themselves as low income to state agencies, eliminating or reducing the

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[73] As reported by NCLC, the Massachusetts Dept. of Telecommunications and Energy has investigated "ways to 'increase the penetration rate for discounted electric, gas and telephone service'" and concluded that utilities and the state agencies administering various low income assistance programs should exchange eligibility data electronically. NCLC at 8, citing Mass. DTE 01-106-A, Order dated Aug. 7, 2003, available at http://www.state.ma.us/dpu/electric/01-106/88order.pdf.

[74] BellSouth at 4-5.

[75] FlaPSC at 6; OkCC at 6.

[76] FlaPSC at 6.

application and verification burden on the customer and carrier. Speeding up Lifeline enrollment may help low income customers avoid problems of non-payment or disconnections. Automatic enrollment will also minimize the need for a recertification process or notice and appeal, because a customer may continue as eligible for Lifeline based on participation in different programs over time. State agencies charged with administering public benefit programs already have incentive to minimize fraud and abuse. Automatic enrollment may allow resources to be spent on outreach programs that are more focused on low-income households who lack telephone service and on households who would be eligible based on income criterion, rather than requiring a broader and more varied focus.

The very real benefits of more affordable telephone service for low income consumers and administrative efficiencies should not be overlooked. Automatic enrollment of Lifeline eligible customers should be adopted as a requirement by the Commission, subject to waiver as discussed above.

VIII. On-line verification for Lifeline enrollment and reverification should be a federal standard.

As did NASUCA in its initial comments, Bellsouth (at 6) supports the use of on-line verification as an efficient and cost-effective method of verifying program-based eligibility for Lifeline/Link-Up. In fact, the FCC has already approved of a form of on-line verification for use by Verizon in Pennsylvania. The FCC approved a waiver request by Verizon Pennsylvania of the written certification requirement for customers who are

[77] USCCB (at 9) and NFFN (at 8-9) identify state experiences with improving enrollment in other public benefit or social welfare programs that may also serve as models.

eligible based on programs administered by the Pennsylvania Department of Public Welfare.[78] In approving the request for waiver, the FCC addressed the accuracy of the process by noting that the Pennsylvania Department of Public Welfare has an incentive to limit fraud, waste and abuse and noted that the method was efficient and reliable.[79]

IX. Self-certification should be used for Lifeline enrollment; verification procedures should not be burdensome.

In its Recommended Decision, the Joint Board supported the continued use of self-certification with respect to program-based criteria but recommended a requirement that customers that are eligible under an income-based criterion provide documentation of income eligibility prior to enrolling in Lifeline.[80] In its initial comments (at 21), NASUCA disagreed with the Joint Board's recommendation that proof of income eligibility be provided prior to enrolling in Lifeline/Link-Up and indicated support for the use of periodic audits after the customer is enrolled. NASUCA, therefore, agrees with those commenters who support the use of self-certification to establish income-eligibility for lifeline benefits. As ACORN states, "Income verification should be kept as simple as possible."[81]

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[78] *In the Matter of Bell Atlantic-Pennsylvania, Inc., Petition for Waiver of Section 54.409(b) of the Commission's Rules and Regulations*, CC Docket No. 96-45, DA 00-2899, 16 FCC Rcd 61 (rel. Dec. 27, 2000).

[79] Id., ¶¶ 7, 9.

[80] Recommended Decision, ¶ 33-34.

[81] ACORN at 5.

The Cleveland Consumers point out that burdensome documentation requirements to qualify for Lifeline based on income can be a deterrent to participation.[82] PULP supports self-certification as a "less cumbersome and more efficient alternative to individual presentation of documentary information prior to enrollment."[83] Oklahoma supports self-certification based on income for the reasons that it would be intrusive for customers to have to present information regarding income levels to the company, especially in small towns where everyone knows each other and also because carriers do not want the administrative burden of verifying income-based eligibility.[84]

NASUCA does not disregard the concerns raised regarding the role of the carriers versus the states in determining income eligibility. However, NASUCA strongly supports the use of self-certification in order to enroll customers in the Lifeline program. Verification, on a periodic basis such as once per year, can then be undertaken by the carriers in conjunction with the states. NCLC (at 6-8) and Dobson (at 3-4) both support a strong state role in verification of income eligibility.

In the absence of self-certification, NFFN and PULP recommend the acceptance of a certification of income by an authoritative agency in order to verify income eligibility.[85] This is a suggestion the FCC should consider in order to assist carriers who may choose to conduct audits once customers are enrolled based on income.

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[82] Cleveland Consumers at 3.

[83] PULP at 2.

[84] OkCC at 3.

[85] NFFN at 3-4; PULP at 2.

The prevention of fraud must be balanced against the costs of a verification program.[86] The CaPUC strongly suggests that "the costs of a verification program would

[86] See NCLC at 7.

exceed losses resulting from any fraud or abuse."[87]

Florida (FlaPSC at 4-5) expresses concerns about the risk of waste, fraud and abuse and simply allowing customers to sign a document without providing any documentation proving eligibility, and MCI and BellSouth also express these concerns.[88] What these parties -- other than BellSouth -- fail to recognize is that with self-certification customers sign a document certifying their income level under the penalty of perjury for providing false information.[89] TxOPC states that the Texas system has used self-certification for several years without problems with fraud.[90] Given the lack of any evidence of fraud from any of the commenting carriers, such language appears to be a proper deterrent.

Once again, it is important to look at Lifeline in the context of the other USF programs, particularly the high-cost program. The federal rules do not contain a requirement that carriers receiving high-cost funding present detailed proof that the funds are used for the statutory purposes.[91] On the state side, Ohio, for one, only requires an affidavit from the carrier to the effect that it complies with the statutory directive.[92] It is difficult to see why a more stringent verification standard should be applied to individual consumers than is applied to carriers.

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[87] CaPUC at 9; see also Dobson at 6.

[88] MCI at 3; BellSouth at 6.

[89] BellSouth merely asserts, without support, that self-certification alone is insufficient. BellSouth at 6.

[90] TxOPC at 4.

[91] See 47 U.S.C. § 254(e); 47 C.F.R. §§ 54.314, 54.315, 54.809, 54.904.

[92] *In the Matter of the Commission Investigation of the Intrastate Universal Service Discounts*, PUCO Case No. 97-632-TP-COI, Entry (August 14, 2003) at 2; available at http://dis.puc.state.oh.us/dis.nsf/0/2D7A7F48B99F7A8585256D82005A4714?OpenDocument .

X. Outreach guidelines should be provided to the states.

Many commenters agree with the Joint Board's Recommended Decision that the FCC adopt federal outreach guidelines to assist states and carriers in their efforts to increase public awareness about Lifeline/Link-up programs.[93] Effective outreach is a vital component of a successful Lifeline/Link-up program. If consumers are unaware of these programs, they cannot participate in them. In an effort to educate consumers on Lifeline, USCCB suggests that the FCC require carriers to inform consumers about Lifeline and Link-up when the customers sign up for telephone service.[94] NASUCA supports this suggestion and believes that many carriers already implement this very effective outreach tool.[95]

USCCB also suggests that carriers notify their customers about Lifeline programs at least once per year.[96] Although this outreach tool may be helpful, it would only reach those consumers who currently have service. Unfortunately, SBC Ohio Lifeline statistics show that consumers do not learn about Lifeline programs from bill inserts.[97] USCCB's

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[93] NASUCA at 22; BellSouth at 7; Dobson at 7; NCLC at 9; FlaPSC at 6; Verizon at 16; USCCB at 10; Cleveland Consumers at 3.

[94] USCCB at 10.

[95] Within the first sequence of questions by customer service representatives, consumers requesting SBC Ohio, Verizon, Cincinnati Bell Telephone ("CBT") or Sprint/United service are asked if they qualify for financial assistance; if so, the consumer then receives a brief overview of the Lifeline/Link-up program and is sent an application. In addition, data from SBC Ohio shows that 60% of customers interviewed after signing up for service in July 2003 said they learned of Lifeline/Link-Up through SBC representatives.

[96] USCCB at 10.

[97] According to SBC Ohio, July 2003 enrollment figures only 1.4% of customers learned of Lifeline/Link-up through a bill page message.

additional suggested outreach measurements could be monitored through the establishment of Consumer Advisory Boards.[98]

Several commenters recognize that some states and carriers already have effective outreach in place and that the FCC should take advantage of the lessons learned by soliciting "suggestions on best practices" from carriers, states and community-based organizations.[99] Verizon also suggests that the FCC enlist the help of federal agencies to act as clearinghouses for information.[100] NASUCA agrees that having a one-stop shop for information would benefit the customers of smaller carriers who do not have the public relations support to develop marketing materials and provide outreach ideas to states with no current outreach practices.

NASUCA also agrees with the USCCB, FlaPSC and Verizon that states and carriers must be allowed to retain the right to determine the most appropriate outreach mechanisms for their consumers.[101] As stated above and by the Joint Board, several states and carriers already have effective outreach in place.[102] It would be beneficial to those states and carriers to continue to work with consumer organizations to develop and design their own specific programs that take into consideration a state's demographic and geographical characteristics.[103] For example, in Ohio, Cincinnati Bell Telephone, SBC

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[98] NASUCA supports the establishment of Consumer Advisory Boards to assist in the coordination of all of outreach efforts. NASUCA at 24.

[99] BellSouth at 8;Verizon at 17

[100] Verizon at 17.

[101] USCCB at 11; FlaPSC at 7; Verizon at 18.

[102] Recommended Decision, Appendix E, § 2

[103] Verizon at 18.

Ohio and Sprint/United have tailored their outreach programs to embrace the demographic and geographical characteristics of their individual service territories. CBT's service territory encompasses a small contiguous, mostly metropolitan area, thus limiting the necessary outlets for outreach. On the other hand, SBC Ohio's territory covers seven non-contiguous metropolitan areas and much rural territory, and requires outreach assistance from many diverse consumer organizations that serve low-income consumers. Sprint/United's service territory is almost entirely rural, with portions in 44 of Ohio's 88 counties. The Sprint/United Consumer Advisory Board utilizes grass-roots community organizations to contact those customers who are otherwise difficult to reach.

XI. Disconnection policies and payment arrangements should be included in the Lifeline rules.

Nonpayment of toll charges is the most common reason for disconnection of a lifeline customer's local telephone service.[104] As explained in NASUCA's initial comments, the Commission should adopt rules prohibiting disconnection of Lifeline customers for non-payment of toll.[105]

For customers who have been disconnected, carrier insistence on payment of past due toll bills and security deposits is a barrier to low-income customers receiving local service. As a result, low-income customers often do without telephone service altogether. The Commission should ensure that customers who have lost telephone service have the opportunity to be reconnected. To that end, NASUCA supported the

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[104] *In the Matter of the Application of the Ohio Bell Telephone Company for Approval of an Alternative For of Regulation*, Case No. 93-487-TP-ALT, Opinion and Order (December 30, 1998) at 30; see also USCCB at 11, n.43.

Joint Board's recommendation encouraging states to implement rules requiring carriers to offer lifeline services to customers with past-due balances, provided that the customer pays the balance or commits to a payment plan. Low-income customers should have the option of entering into a payment plan to ward off imminent telephone service termination and/or for the reconnection of local telephone service. Offering lifeline customers a payment plan option would result in greater participation in the lifeline program while providing a way for low-income customers to cure past arrearages. NASUCA's position is supported by a number of parties in this proceeding.[106]

XII. There should be no restrictions on Lifeline customers' subscription to vertical services.

NASUCA proposes that states should not be allowed to restrict the purchase of vertical services by Lifeline customers.[107] The Joint Board has merely recommended "that the Commission *encourage* states not to adopt rules that would restrict Lifeline/Link-Up customers from purchasing vertical services."[108]

The comments of the Cleveland Consumers support the NASUCA position, based on specific experience with the SBC Lifeline program in Ohio.[109] As noted by the Cleveland Consumers, vertical services may offer health or safety benefits to consumers and so should remain available to Lifeline customers. The Cleveland Consumers

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[105] NASUCA at 25.

[106] See USCCB at 12-13; OkCC at 5; Cleveland Consumers at 3-4.

[107] NASUCA Comments at 27-35.

[108] Recommended Decision, ¶ 62 (emphasis added).

[109] Cleveland Consumers at 1, 4.

comments support NASUCA's concern that restrictions on the purchase of vertical services may discourage Lifeline enrollment.[110] The Commission should modify the Lifeline program to prohibit restrictions on the purchase of vertical services, in order to remove a barrier to Lifeline enrollment and in furtherance of the policy of § 254(b)(3) of the Act.[111]

Given that the federal Lifeline discount is designated for application to the federal subscriber line charge and a small part of local service charges, the discount cannot be used to fund the purchases of non-basic or vertical services.[112] State efforts to condition the availability of the Lifeline discount on the customer's agreement to not purchase other telecommunications services represent an unreasonable restraint on Lifeline customers. All consumers, including low income consumers, are to have access to telecommunications service under Section 254(b)(3) of the 1996 Act.[113] Imposition of this choice on low-income consumers -- receiving *either* the Lifeline discount *or* services of value to the consumer -- is inconsistent with the 1996 Act. That disabled consumers may also be low income provides additional support for removal of any state restrictions.[114]

Although Lifeline consumers should not be prohibited from subscribing to vertical services, carriers should be prohibited from targeting Lifeline customers in

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110 *Id.*

111 NASUCA at 28-29; 47 U.S.C. § 254(b)(3).

112 NASUCA at 27-28.

113 *Id*. at 27-35.

114 *Id*. at 32-35.

marketing the services. This strikes an appropriate balance between the needs of Lifeline customers for the services and their need to be protected from high-pressure marketing.

XIII. An appeals process should be established.

NCLC supports adoption of an appeals process, agreeing with the Joint Board's recommendation that prior to terminating lifeline assistance carriers should provide lifeline customers a 60 days notice informing them that lifeline assistance will be terminated as of a particular date unless the customer produces the type of income verification specified in the notice.[115] The results of such a notice would serve to prevent erroneous lifeline termination while ensuring maximum customer participation in the lifeline program. The 60-day period provides customers the time to make the necessary payment and/or to gather the appropriate income information to prevent termination of lifeline assistance if a customer believes benefits are being wrongfully terminated.

At present, there is no national lifeline eligibility termination procedure. In fact, carriers are left to determine for themselves how best to determine a customer's lifeline assistance eligibility. Such practices have resulted in incomplete and inconsistent lifeline eligibility procedures nationally. NASUCA agrees with NCLC.

XIV. Conclusion

In closing, NASUCA is compelled to highlight what may rank as the most absurd comment on the Recommended Decision. Verizon asserts that it "is premature to modify Lifeline/Link-Up eligibility" because the programs have existed in their current form

[115] Recommended Decision at ¶ 29. See NCLC at 14-15.

only since 1997.[116] This is the same company that filed a Petition for Forbearance to do away with the unbundled network element platform ("UNE-P") only a year after the Supreme Court upheld the Commission's orders on the UNE-P, only a few months after the Commission decided not to do away with the UNE-P, and *before* the Commission's order in that regard was issued.[117] Verizon obviously applies a different timing standard to protecting its market dominance than to providing benefits to low-income consumers.

The Commission should reject Verizon's request for forbearance from making improvements to the Lifeline and Link-Up programs, and should adopt the recommendations made herein and in NASUCA's initial comments.

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[116] Verizon at 2-3.

[117] See *In the Matter of Petition for Expedited Forbearance from the Current Pricing Rules for the Unbundled Network Element Platform*, WC Docket No. 03-157, NASUCA Comments (August 18, 2003) at 1-2.

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